

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB 23 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2009-0320-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
JOHN LEE JUSTIN LONG,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. CR-20060509 and CR-20061002

Honorable Stephen C. Villarreal, Judge

REVIEW GRANTED; RELIEF DENIED

Patrick C. Coppen

Tucson  
Attorney for Petitioner

HOWARD, Chief Judge.

¶1 Petitioner John Long pleaded guilty to several charges of armed robbery, robbery, and theft of means of transportation, and was sentenced to multiple presumptive prison terms, including two consecutive terms totaling 21.75 years. He sought relief pursuant to Rule 32, Ariz. R. Crim. P., raising claims of ineffective assistance of counsel

and sentencing error. Following an evidentiary hearing, the trial court denied his petition for post-conviction relief. This petition for review followed.

¶2 Long argues his attorney was ineffective at sentencing. He asserts that counsel “failed to investigate and present readily available” mitigating evidence and that, before the court at sentencing, she did not clarify that the weapon involved was not a functional firearm.<sup>1</sup> He further argues that the trial court erred in sentencing him to consecutive terms with respect to two of the charges because he used a simulated firearm rather than a real one and because the court did not properly consider mitigating evidence.

¶3 We will not disturb a trial court’s grant or denial of post-conviction relief absent a clear abuse of the court’s discretion. *State v. Swoopes*, 216 Ariz. 390, ¶4, 166 P.3d 945, 948 (App. 2007). And we cannot say the court abused its discretion in denying Long’s petition for post-conviction relief. The court clearly identified the claims Long had raised and resolved them correctly in a thorough, well-reasoned minute entry, which

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<sup>1</sup>Long refers to the firearm as a “hollowed out pellet gun,” an “inoperative or hollowed out air pistol,” and a non-working firearm. In support, he cites the presentence report, which merely states that he tossed an “air gun” out of the vehicle during the pursuit following one of his offenses. However, there is no evidence in the record before us to prove that the firearm was inoperable and therefore would not meet the statutory definition of a firearm in A.R.S. § 13-105(19). Nor is there any evidence to prove that this was the only weapon used; Long could have used another firearm in commission of some of these crimes. In fact, the presentence report actually indicates that “Long pulled out a handgun and chambered a round.” He also argues that the firearm could not have been functional because he had prior felony convictions but was not charged with prohibited possession of a firearm. But the absence of such a charge does not mean that the state conceded the condition of the weapon. Because there is nothing before us showing that only a non-working firearm was used, we need not decide whether such a circumstance would affect the court’s evaluation of Long’s petition.

we adopt. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly ruled on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court[’s] rehashing the trial court’s correct ruling in a written decision”).

¶4 Finding no abuse of the trial court’s discretion, we grant review but deny relief.

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Presiding Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge